

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

In re Application)	Examiner: Paula L. Craig
Michael T. Morman et al.)	
)	Art Unit: 3761
Serial No.: 10/730,364)	
)	Deposit Account: 04-1403
Filed: December 8, 2003)	
)	Customer No.: 22827
Confirmation No.: 2821)	

Title: ABSORBENT ARTICLE WITH ELASTOMERIC BORDERED EXTENSIBLE MATERIAL BODYSIDE LINER AND METHOD OF MAKING

1. ☐ **NOTICE OF APPEAL:** Pursuant to 37 CFR 41.31, Applicant hereby appeals to the Board of Appeals from the decision dated _____, of the Examiner finally rejecting claims _____.
2. ☒ **BRIEF** on appeal in this application pursuant to 37 CFR 41.37 is transmitted herewith (1 copy).
3. ☐ An **ORAL HEARING** is respectfully requested under 37 CFR 41.47 (due within two months after Examiner's Answer).
4. ☐ Reply Brief under 37 CFR 41.41(b) is transmitted herewith (1 copy).
5. ☐ "Small entity" verified statement filed: [] herewith [] previously.

6. **FEE CALCULATION:**

	Fees
If box 1 above is X'd enter \$ 510.00	\$ <u>0.00</u>
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If box 4 above is X-d enter -0- (no fee)	\$ <u>0.00</u>

PETITION is hereby made to extend the original due date of November 5, 2008, hereby made for an extension to cover the date this response is filed for which the requisite fee is enclosed (1 month \$120; 2 months \$460; 3 months \$1,050; 4 months \$1,640, 5 months \$2,230

\$ 120.00

SUBTOTAL: \$ 630.00

Less any previous extension fee paid since above original due date. - \$ 0.00

Less any previous fee paid for prior Notice of Appeal since Board did not render a decision on the merits. MPEP § 1204.01 - \$ 0.00

Less any previous fee paid for submitting Brief on prior Appeal since Board did not render a decision on the merits. MPEP § 1204.01 - \$ 0.00

SUBTOTAL: \$ 630.00

If "small entity" verified statement filed ☐ previously,
☐ herewith, enter one-half (½) of subtotal and subtract - \$ 0.00

TOTAL FEE ENCLOSED: \$ 630.00

- ☐ Fee enclosed.
- ☐ Charge fee to our Deposit Account/Order Nos. in the heading hereof (for which purpose one additional copy of this sheet is attached)
- ☒ Charge to credit card
- ☐ Fee NOT required since paid in prior appeal in which the Board of Appeals did not render a decision on the merits.

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any fees in addition to the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter relative to this application and the resulting official document under Rule 20, or credit any overpayment, to our Account No. shown in the heading hereof. This statement does not authorize charge of the issue fee in this case.

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Title: ABSORBENT ARTICLE WITH ELASTOMERIC BORDERED EXTENSIBLE
MATERIAL BODYSIDE LINER AND METHOD OF MAKING

APPELLANT'S ORIGINAL APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. box 1450
Alexandria, VA 22313-1450

Sir:

Appellant hereby submits its original appeal brief to the Examiner's May 21,
2008, Final Action in accordance with 37 CFR § 41.37 for the subject application.

1. REAL PARTY IN INTEREST:

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee of the Applicants' entire right title and interest.

2. RELATED APPEALS AND INTERFERENCES:

Serial No. 10/730,493.

3. STATUS OF CLAIMS:

Claims 1-28 are pending. Claims 10-12, 15, 20-24 and 26-28 have been withdrawn from consideration. Appellant appeals the rejections of claims 1-9, 13, 14, 16-19 and 25, which are under final rejection mailed on May 21, 2008.

4. STATUS OF AMENDMENTS:

The claims were not amended after the May 21, 2008, final rejection from which this appeal is taken.

5. SUMMARY OF CLAIMED SUBJECT MATTER:

Page and line numbers are references to Appellant's patent application.

Independent claim 1:

As shown in FIGs. 3 – 9 and explained at page 17, lines 16 – 20, there is an absorbent article 100.

As shown in FIG. 3 and explained at page 17, lines 20 – 32, the absorbent article 100 includes a chassis 120 having a front waist region 114, a back waist region 112, and a crotch region 116 extending between said front and back waist regions.

As shown in FIGs. 3 – 9 and explained at page 17, lines 20 – 21 and page 18, lines 4 – 5, the absorbent article 100 includes an outer cover member 130 extending longitudinally between said front and back waist regions 114, 112.

As shown in FIGs. 3 – 9 and explained at page 17, lines 20 – 21 and page 18, lines 4 – 5, the absorbent article 100 includes a bodyside liner 128 extending longitudinally between said front and back waist regions 114, 112.

As shown in FIGs. 3 – 9 and explained at page 18, lines 4 – 7 and page 20, lines 11 – 15, the absorbent article 100 includes an absorbent body structure 132 sandwiched between said outer cover member 130 and said bodyside liner 128. As explained at page 3, line 32 through page 4, line 3 and page 21, lines 21 – 23, the absorbent body structure 132 is non-extensible.

As shown in FIGs. 1, 1A, 2A – 2E and 3 – 9 and explained at page 3, lines 6 – 14; page 10, lines 21 – 23 and 27 – 33; page 11, lines 8 – 11 and 22 – 25; page 12, lines 29 – 30; page 14, line 31 through page 15, line 12; page 17, lines 7 – 10 and page 19, lines 31 – 33, the bodyside liner 128 comprises a material 10 having an untensioned and ungathered, inherently extensible base layer 16 of a fluid permeable material. As shown in FIGs. 3 – 9 and explained at page 3, lines 6 – 15, the base layer 16 is extendable to at least about 125% of its original dimension in a first direction essentially without fracture of said base layer material.

As shown in FIGs. 1, 1A, 2A – 2D and 3 – 9 and explained at page 11, lines 17 –

30; page 12, lines 12 – 18; page 13, lines 10 – 15; and page 3, lines 6 – 10 and 22 – 26, the bodyside liner 128 includes at least a first and a second strip of substantially untensioned elastomeric material 18, 20 wholly disposed on and attached to said base layer material 16 to form flat planar composite regions 14 with a space between said strips 18, 20 such that a center untensioned region 12 of said base layer material 16 is bordered on at least two longitudinally extending sides by said composite regions 14 of said elastomeric materials 18, 20 and said base layer material 16. As shown in FIGs. 3 – 9 and explained at page 4, lines 12 – 15, the center region 12 is generally disposed over said absorbent body structure 132.

As shown in FIGs. 3 – 9 and explained at page 4, lines 1 – 3 and 12 – 18 and page 21, lines 19 – 30, the center region 12 of untensioned base layer material 16 is bonded directly to the immediately underlying portion of said absorbent body structure 132 in registry with the center region 12 of untensioned base layer material in its untensioned condition. As shown in FIGs. 3 – 9 and explained at page 21, lines 28 – 30 and page 22, lines 3 – 8, the composite regions 14 are stretchable in at least a second direction of said absorbent article 100.

Independent claim 25:

As shown in FIGs. 3 – 9 and explained at page 17, lines 16 – 20, there is an absorbent article 100.

As shown in FIG. 3 and explained at page 17, lines 20 – 32, the absorbent article 100 includes a chassis 120 having a front waist region 114, a back waist region 112, and a crotch region 116 extending between said front and back waist regions.

As shown in FIGs. 3 – 9 and explained at page 17, lines 20 – 21 and page 18, lines 4 – 5, the absorbent article 100 includes an outer cover member 130 extending longitudinally between said front and back waist regions 114, 112.

As shown in FIGs. 3 – 9 and explained at page 17, lines 20 – 21 and page 18, lines 4 – 5, the absorbent article 100 includes a bodyside liner 128 extending longitudinally between said front and back waist regions 114, 112.

As shown in FIGs. 3 – 9 and explained at page 18, lines 4 – 7 and page 20, lines 11 – 15, the absorbent article 100 includes an absorbent body structure 132 sandwiched between said outer cover member 130 and said bodyside liner 128. As explained at page 3, line 32 through page 4, line 3 and page 21, lines 21 – 23, the absorbent body structure 132 is non-extensible.

As shown in FIGs. 1, 1A, 2A – 2E and 3 – 9 and explained at page 3, lines 6 – 14; page 10, lines 21 – 23 and 27 – 33; page 11, lines 8 – 11 and 22 – 25; page 12, lines 29 – 30; page 14, line 31 through page 15, line 12; page 17, lines 7 – 10 and page 19, lines 31 – 33, the bodyside liner 128 comprises a material 10 having an untensioned and ungathered, inherently extensible base layer 16 of a fluid permeable material. As shown in FIGs. 3 – 9 and explained at page 3, lines 6 – 15, the base layer 16 is extendable to at least about 125% of its original dimension in a first direction essentially without fracture of said base layer material.

As shown in FIGs. 1, 1A, 2A – 2D and 3 – 9 and explained at page 3, lines 17 – 22; page 11, lines 17 – 30; page 12, lines 12 – 18; page 13, lines 10 – 15; and page 3, lines 6 – 10 and 22 – 23, the bodyside liner 128 includes a strip 18 or 20 of substantially untensioned elastomeric material attached to said base layer material 16 along a

longitudinally extending side thereof to form a flat planar composite region 14 and such that a first region 12 of said base layer material 16 is adjacent a composite region 14 of said elastomeric material 18 or 20 and said base layer material 16. As shown in FIGs. 3 – 9 and explained at page 4, lines 12 – 15, the first region 12 of base layer material 16 that is adjacent said composite region 14 is also generally wholly disposed on and bonded directly to said absorbent body structure 132.

As shown in FIGs. 3 – 9 and explained at page 4, lines 1 – 3 and 12 – 18 and page 21, lines 19 – 30, the first region 12 of base layer material 16 is bonded directly to the immediately underlying portion of said absorbent body structure 132 in registry with the first region 12 of base layer material 16 in its untensioned condition. As shown in FIGs. 3 – 9 and explained at page 21, lines 28 – 30 and page 22, lines 3 – 8, the composite region 14 is stretchable in at least a transverse direction in use of said absorbent article 100.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL:

The rejection of claims 1-4, 6, 8, 9 and 25 under 35 U.S.C. 103(a) as being unpatentable over Serbiak et al (USP 5,846,232).

The rejection of claim 9 under 35 U.S.C. 103(a) as being unpatentable over Serbiak et al (USP 5,846,232).

The rejection of claims 5 and 7 under 35 U.S.C. 103(a) as being unpatentable over Serbiak in view of Krautkramer et al (USP 6,231,557).

The rejection of claims 13, 14 and 16-19 under 35 U.S.C. 103(a) as being unpatentable over Serbiak in view of Popp et al (U.S. Pub. 2002/0087139).

7. ARGUMENT:

A. Claims 1-4, 6, 8, 9 and 25 are patentable under 35 U.S.C. 103(a) over Serbiak et al

Each of appellant's claims 1 and 25 requires (emphasis added):

a **non-extensible** absorbent body structure
sandwiched between said outer cover member and said
body side liner;

Lines 4-6 on page 3 of the May 2008 Final Office Action contends that (emphasis added):

Serbiak teaches a non-extensible absorbent body structure **36** sandwiched between the outer cover member and the body side liner (Figs. 1-9, col. 7, line 39 to col. 8, line 26, col. 10, lines 12-15, Claim 3).

However, in Serbiak et al, the absorbent core 36 is not itself non-extensible. Only the combination of Serbiak et al's absorbent core 36 and base structure 26 becomes non-extensible area 37, which is defined by the area over which the **absorbent core 36 is effectively attached to the base structure 26**. This is explained at Serbiak et al column 8, lines 17-20 as follows (emphasis added):

the absorbent core 36 is **fixed** to the base structure 26 to form a **non-extensible area 37** defined by the area over which the absorbent core 36 is **effectively attached** to the base structure 26.

Moreover, Serbiak et al makes it clear that but for the attachment, the absorbent core 36 can be part of an elastic extensible zone 30. This is explained at Serbiak et al column 8, lines 26-30 as follows (emphasis added):

In any area of the drawings in which the absorbent core 36 **is not secured to the base structure 26**, and elastic layer 28 is secured between body side liner layer 24 and outer cover layer 22, the region is marked with circles

indicating an **extensible zone 30**.

Accordingly, it appears that it is Serbiak et al's base structure 26, rather than Serbiak et al's absorbent core 36, that provides non-extensibility to the combination. Serbiak et al is therefore deficient as to a **non-extensible** absorbent body structure required by each of claims 1 and 25 to be sandwiched between the outer cover member and the bodyside liner.

In trying to overcome this deficient attempt to present a prima facie case of obviousness, the July 2008 Advisory Action contrives the following argument (emphasis added):

In an apparatus claim, whether the absorbent body structure is non-extensible due to its own construction and materials, or is made non-extensible by attachment to some other component, is irrelevant in a 35 USC 103(a) determination. **The limitation of how the absorbent body structure is constructed may be treated as a product by process limitation.** As set forth in MPEP 2113 product by process claims are not limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appealing to be substantially the same or similar is found, a 35 U.S.C. 103 rejection may be made and the burden is shifted to applicant to show a nonobvious difference. See MPEP 2113, In re Thorpe, 227 USPQ 964 (Fed. Cir. 1985), and ex parte Masham, 2 USPQ 2d 1647 (BPAI 1987).

However, the July 2008 Advisory Action's argument suffers from two flaws – (1) it incorrectly introduces "product by process" as a straw man to knock down, and (2) it leads to absurdity.

First, the product by process argument is inapplicable and little more than a distraction. Appellant's claims 1 and 25 cannot be interpreted to require a product by process limitation. Appellant's claims 1 and 25 do not say "an absorbent article

rendered non-extensible by * * *.” Appellant’s claims 1 and 25 merely positively recite “a non-extensible absorbent body structure.” By the flawed logic of the argument put forth in the July 2008 Advisory Action, every claim having an adjective modifying a noun must be interpreted as a product by process claim.

Second, what the July 2008 Advisory Action’s argument overlooks is the fact that in structures of appellant’s claims 1 and 25, the absorbent body structure must be bonded directly to the base layer material, which appellant’s claims 1 and 25 require to be “inherently extensible.” Thus, according to the argument advanced by the July 2008 Advisory Action, the person of ordinary skill is supposed to believe that connecting an **extensible** absorbent body structure to an **extensible** base layer as required in applicants’ claims will yield somehow a **non-extensible** absorbent structure sandwiched between the outer cover member and the bodyside liner. Appellant respectfully submits that the inherent implausibility of two **extensible** elements somehow becoming **non-extensible** when attached to one another should be self evident. And yet the July 2008 Advisory Action submits that by virtue of this implausible argument “the burden is shifted to applicant to show a nonobvious difference.”

Appellant denies that any burden shifting can be based on this twice-flawed argument floated in the July 2008 Advisory Action. Accordingly, the Final Action has failed to present a prima facie case of obviousness for any of the claims on appeal.

The bodyside liner of independent claim 1 is constructed with the following requirements (emphasis added):

wherein **said center region of untensioned base layer material is bonded directly to the immediately underlying portion of said absorbent**

body structure in registry with the center region of untensioned base layer material in its untensioned condition and said composite regions are stretchable in at least a second direction of said absorbent article.

Similarly, the bodyside liner of independent claim 25 is constructed with the following requirements (emphasis added):

wherein **said first region of base layer material is bonded directly to the immediately underlying portion of said absorbent body structure in registry with the first region of base layer material in its untensioned condition** and said composite region is stretchable in at least a transverse direction in use of said absorbent article.

As explained at page 4, lines 14 – 25, of appellant's specification (emphasis added):

The center region overlies an absorbent body structure in the absorbent article and may be adhered to at least a portion of the underlying absorbent body structure **to ensure that its capillary structure does not change upon stressing (stretching) the elastomeric side strips of the composite material.**

The **elastomeric side strips** may extend out to serve as elastomeric side portions and **provide the absorbent article chassis with** desired degrees of **stretch without compromising the structural integrity or characteristics of the liquid permeable center region of base material** and the underlying absorbent body structure. The side panels and an elastic outer cover may extend independently from the absorbent body structure, in which case the **absorbent structure need not extend and thus have its liquid handling properties change when the chassis is stretched.**

That is why each of claim 1 for example requires the first and second strips of substantially untensioned elastomeric material wholly disposed on and attached to the

base layer material to form flat planar composite regions with a space between the strips such that a center untensioned region of the base layer material is bordered on at least two longitudinally extending sides by the composite regions of the elastomeric materials and the base layer material and generally disposed over the absorbent body structure. Each of these composite regions outlies to one of the opposite sides of the center region of untensioned base layer material that is **bonded directly** to the immediately underlying portion of the absorbent body structure. Each of these composite regions stretches in at least a second direction other than just the longitudinal direction. By being so constructed and disposed, each outlying composite region functions to absorb any stretching that otherwise might reach the absorbent body structure and ruin the optimal capillary structure of the absorbent body structure. So the flat planar composite regions in appellant's claimed article in effect serve to protect the absorbent body structure's optimal absorbent qualities that are maintained by the direct bonding to the bodyside liner.

The May 2008 Final Office Action acknowledges that Serbiak et al does not teach that the center region of untensioned base layer material (the bodyside liner) is bonded directly to the immediately underlying portion of the absorbent body structure.

To compensate for this deficiency in Serbiak et al, lines 3 – 7 of page 5 and lines 10 – 16 of page 7 of the May 2008 Final Office Action contend (emphasis added):

In light of Serbiak's teaching that the absorbent body structure is fixedly attached to a structure which includes the base layer material, it would have been obvious to one of ordinary skill in the art to **modify Serbiak** to include the center region of the base layer material being **bonded directly** to the immediately underlying portion of the absorbent body structure.

However, this conclusion of the May 2008 Final Office Action completely discounts, and erroneously so, the 180 degree difference between something that is **directly bonded** versus something that is **indirectly attached**. The error of such a conclusion is particularly pertinent because Serbiak et al's base structure 26 is the combination cover member and bodyside liner, and direct attachment to the base structure 26 could be satisfied by direct attachment to the cover member. Yet this would at best constitute only indirect attachment to the bodyside liner and yet not even indirect attachment of the bodyside liner to the immediately underlying portion of the absorbent body structure.

Moreover, this erroneous conclusion of the May 2008 Final Office Action fails to account for, much less overcome, the predisposition of the skilled artisan to avoid the risk of degrading either the permeability of the bodyside liner or the capillary absorbency of the portion of the absorbent body structure facing the bodyside liner, if the bodyside liner portion of the absorbent body structure is bonded directly to the immediately underlying portion of the absorbent body structure.

In view of the deficiencies noted above in Serbiak et al, appellant respectfully submit that claims 1-4, 6, 8, 9 and 25 are patentable under 35 U.S.C. § 103(a) over Serbiak et al.

B. Claim 9 is patentable under 35 U.S.C. 103(a) over Serbiak et al

As noted above, the May 2008 Final Office Action contends that Serbiak et al **elastic layer 28** provides the two elastomeric strips to be attached to the base layer

material per appellant's claim 1. Appellant's claim 9 requires the two elastomeric strips to be attached to the base layer material in a generally **tensioned** state. Paragraph 11 on page 8 of the May 2008 Final Office Action contends that Serbiak et al Figs. 1 – 9 and column 7, lines 11 – 36 disclose this **tensioned** state feature of appellant's claim 9. However, Serbiak et al Figs. 1 – 9 fails to show any such construction, and Serbiak et al column 7, lines 11 – 36 teaches the opposite. Indeed, Serbiak et al column 7, lines 23 – 38 plainly states (emphasis added):

Moreover, the bodyside liner layer 24, outer cover layer 22 and elastic layer 28 can simultaneously coexist in a substantially fully extended **unstressed** condition. This relationship is contemplated because **no significant stress** is placed upon the respective layers at the time the extensible zone 30 is formed.

Referring to claim 9, the July 2008 Advisory Action attempts to overcome this deficiency in the Final Rejection by the following argument (emphasis added):

The claim does not require that the absorbent article is constructed by a step of attaching the elastomeric materials to the base layer material while the elastomeric materials are in a generally tensioned state; even if it did, this would be no more than a **product by process limitation**. As claim 9 stands, it **requires no more than under at least some conditions the elastomeric materials are in a generally tensioned state at the same time as the elastomeric materials are attached to the base layer material**. The elastomeric materials of Serbiak are fully capable of being placed in a state of tension while attached to the base layer material by extending the material (Figs. 1-9, col. 7, lines 11-36).

The issue here is how fairly to interpret appellant's claim language. Thus, appellant disputes the first sentence of the above quotation. Claim 9 plainly states that "said elastomeric materials are attached to said base layer material in a generally

tensioned state.” Appellant respectfully submits that to the person of ordinary skill in this art, such a statement means that **tensioned** elastomeric material is attached to the base layer material. Claim 9 is a product claim, not a method claim. The requirement of claim 9 clearly differentiates this product from a product that consists instead of **untensioned** elastomeric material attached to base layer material. These are two different products, and appellant has sought to particularly point out this difference to the extent possible by the constraints of the English language. Appellant’s asserted interpretation of claim 9 becomes reinforced when one considers that claim 8 is directed to the very product in which **untensioned** elastomeric material is attached to the base layer material.

Furthermore, the strained construction offered by the Advisory Action is directly at odds with appellant’s specification at page 5, lines 15-19 and lines 29-32. Lines 15-19 of page 5 of appellant’s specification state (emphasis added):

In an alternate embodiment, the elastomeric material strips are attached to the lateral sides of the base material in a **tensioned state** such that upon releasing the tensioning force on the material, the side laminate portions are stretchable in the cross-direction and machine-direction.

Lines 29-32 of page 5 of appellant’s specification state (emphasis added):

The elastomeric strips may be attached in a tensioned or untensioned state. Attaching a **tensioned**, e.g., extended, elastic and allowing it to retract and gather the inherently extendible material will increase the amount laminate will extend before the inherently extendible material fails.

Thus, the Advisory Action only can support its contention directed at claim 9 if the Advisory Action is permitted to improperly construe appellant’s claim 9 in a manner

contrary to the way that the person of ordinary skill would interpret claim 9 against the background of appellant's written description.

Appellant therefore respectfully submits that claim 9 is patentable under 35 U.S.C. § 103(a) over Serbiak et al for this additional reason.

C. Claims 5 and 7 are patentable under 35 U.S.C. 103(a) over Serbiak et al in view of Krautkramer et al

Krautkramer et al fails to correct the deficiencies noted above in Serbiak et al. Appellant therefore respectfully submit that claims 5 and 7 are patentable under 35 U.S.C. 103(a) over Serbiak et al in view of Krautkramer et al.

Concerning claim 7, paragraph 14 on page 9 of the May 2008 Final Office Action contends that Krautkramer et al column 23, lines 24 – 55 “teaches elastomeric materials including webs of elastomeric fibers.” Appellant disputes this contention and points out that the word “web” never is mentioned in Krautkramer et al column 23, lines 24 – 55, which merely states (emphasis added):

The elastic members 34 may have any of a multitude of configurations. For example, the width of the individual elastic members 34 may be varied from about 0.25 millimeters (0.01 inch) to about 25 millimeters (1.0 inch) or more. The elastic members may comprise a single strand of elastic material, or may comprise **several parallel or non-parallel strands** of elastic material, or may be applied in a rectilinear or curvilinear arrangement. Where the strands are non-parallel, two or more of the strands may intersect or otherwise interconnect within the elastic member. The elastic members may be affixed to the diaper in any of several ways which are known in the art. For example, the elastic members may be ultrasonically bonded, heat and pressure sealed using a variety of bonding patterns, or adhesively bonded to diaper 10 with sprayed or swirled patterns of hotmelt

adhesive.

In particular embodiments of the invention, the leg elastic members 34 may include a carrier sheet to which are attached a grouped set of elastics composed of a plurality of individual elastic strands. The elastic strands may intersect or be interconnected, or be entirely separated from each other. The carrier sheet may, for example, comprise a 0.002 cm thick polymer film, such as a film of unembossed polypropylene material. The elastic strands can, for example, be composed of LYCRA elastomer available from DuPont, a business having offices in Wilmington, Del. Each elastic strand is typically within the range of about 470-1500 decitex (dtx), and may be about 940-1050 dtx. In particular embodiments of the invention, for example, **three or four strands** can be employed for each elasticized legband.

Appellant respectfully submits that “several parallel or non-parallel strands” or “three or four strands” do not a web make.

By citing the above portion of Krautkramer et al, the May 2008 Final Office Action is apparently citing **Krautkramer et al’s leg elastic members 34** as if they are the same as the appellant’s first and second strips of **substantially untensioned** elastomeric material that form each of the two **flat planar composite regions** that border one of the opposite sides of the center region of untensioned base layer material that is bonded directly to the immediately underlying portion of the absorbent body structure.

However, as is the case with Krautkramer et al, leg elastics are usually themselves attached to the underlying substrate while the leg elastics are in a **highly tensioned condition** of at least 150%, if not 200%, elongation. Alternatively, as is the case with Krautkramer et al, if the leg elastics are to be applied in a substantially

untensioned condition, then the substrate underlying the leg elastics must be in a **gathered condition**, and any combination of untensioned elastic and underlying gathered base layer material would not form a **flat planar composite region**. Thus, appellant's first and second strips **cannot** inadvertently implicate mere elastic strips around leg openings like the Krautkramer et al leg elastic members 34. Appellant therefore respectfully submits that claim 7 is patentable under 35 U.S.C. § 103(a) over Serbiak et al in view of Krautkramer et al for this additional reason.

D. Claims 13, 14 and 16-19 are patentable under 35 U.S.C. 103(a) over Serbiak et al in view of Popp et al

Popp et al fails to correct the deficiencies noted above in the Office Action's application of Serbiak et al. Appellant therefore respectfully submits that claims 13, 14 and 16-19 are patentable under 35 U.S.C. 103(a) over Serbiak in view of Popp et al.

Conclusion

Claims 1-9, 13, 14, 16-19 and 25 are in condition for allowance and should be passed to issue.

8. CLAIMS APPENDIX:

1. (Previously presented) An absorbent article, comprising:
 - a chassis having a front waist region, a back waist region, and a crotch region extending between said front and back waist regions;
 - an outer cover member extending longitudinally between said front and back waist regions;
 - a bodyside liner extending longitudinally between said front and back waist regions;

a non-extensible absorbent body structure sandwiched between said outer cover member and said bodyside liner;

said bodyside liner comprising a material having

an untensioned and ungathered, inherently extensible base layer of a fluid permeable material, said base layer extendable to at least about 125% of its original dimension in a first direction essentially without fracture of said base layer material;

at least a first and a second strip of substantially untensioned elastomeric material wholly disposed on and attached to said base layer material to form flat planar composite regions with a space between said strips such that a center untensioned region of said base layer material is bordered on at least two longitudinally extending sides by said composite regions of said elastomeric materials and said base layer material, said center region generally disposed over said absorbent body structure; and

wherein said center region of untensioned base layer material is bonded directly to the immediately underlying portion of said absorbent body structure in registry with the center region of untensioned base layer material in its untensioned condition and said composite regions are stretchable in at least a second direction of said absorbent article.

2. (Original) The absorbent article as in claim 1, wherein said article is one of a child's training pant, disposable diaper, incontinence article, and feminine hygiene article.

3. (Previously presented) The absorbent article as in claim 1, wherein said base layer material defines a pair of opposed lateral side edges, each of said first and second elastomeric strips defining a lateral side edge that is aligned with one of said lateral

edges of said base layer material.

4. (Original) The absorbent article as in claim 1, wherein said base layer material comprises a non-woven material.

5. (Original) The absorbent article as in claim 4, wherein said non-woven material comprises a bicomponent spunbond material.

6. (Original) The absorbent article as in claim 1, wherein said first and second elastomeric materials comprise an elastic film, said films being laminated to said base layer material.

7. (Original) The absorbent article as in claim 1, wherein said first and second elastomeric materials comprise webs of elastomeric fibers.

8. (Original) The absorbent article as in claim 1, wherein said elastomeric materials are attached to said base layer material in a generally untensioned state.

9. (Original) The absorbent article as in claim 1, wherein said elastomeric materials are attached to said base layer material in a generally tensioned state.

10. (Withdrawn) The absorbent article as in claim 1, wherein said bodyside liner is a separate component from said outer cover member, said bodyside liner and said outer cover member being generally coextensive and attached along side seams of said chassis, said composite regions of said bodyside liner defining longitudinal strips on each side of said center region and extending outwardly from said center region to said respective side seams.

11. (Withdrawn) The absorbent article as in claim 10, further comprising longitudinally extending containment flaps attached to said chassis over said bodyside liner generally outboard of said absorbent body structure.

12. (Withdrawn) The absorbent article as in claim 10, wherein portions of said composite regions of said bodyside liner are folded outboard of said absorbent body structure so as to define longitudinally extending containment flaps on opposite lateral sides of said absorbent body structure.

13. (Previously presented) The absorbent article as in claim 1, wherein said composite regions of said bodyside liner define composite strips extending laterally from said center region, each of said composite strips folded to form a folded composite region at a side fold line of said chassis and extending laterally from said fold line toward said center region and having a portion disposed above and an opposed portion disposed below said absorbent body structure and attached to each other such that said folded composite regions also define said outer cover member of said chassis.

14. (Original) The absorbent article as in claim 13, further comprising leg elastics between said folded composite regions.

15. (Withdrawn) The absorbent article as in claim 13, further comprising elastomeric side panels attached to said chassis generally adjacent to said fold lines, said side panels attached at side seams to define a pant-like structure.

16. (Original) The absorbent article as in claim 13, wherein portions of said composite regions of said bodyside liner are folded outboard of said absorbent body structure so as to define longitudinally extending containment flaps on opposite lateral sides of said absorbent body structure.

17. (Previously presented) The absorbent article as in claim 13, wherein said composite regions are also attached to said absorbent body structure.

18. (Previously presented) The absorbent article as in claim 1, wherein said

composite regions of said bodyside liner define longitudinal composite strips extending outwardly from said center region and defining elastomeric side panels that are attached at side seams of said chassis to define a pant-like structure, said longitudinal composite strips folded outboard of said side panels at fold lines and extending laterally back under said absorbent body structure and attached to each other such that said composite regions also define said outer cover member of said chassis.

19. (Original) The absorbent article as in claim 18, wherein said article is a child's training pant.

20. (Withdrawn) A method of producing a composite material for an absorbent article, said method comprising:

providing a base layer of inherently extensible material, the base layer extendable to a least about 125% of its original dimension in a first direction essentially without fracture of the base layer material;

superimposing and attaching a first elastomeric material along a first side of the extensible base layer material while maintaining the base layer material in a non-tensioned state, the first elastomeric material having a width that is less than the width of the base layer material;

maintaining the base layer material in an untensioned state while attaching the base layer to another generally non-extensible material such that the base layer material is rendered generally non-extensible after attachment to the other material; and

wherein a resulting composite material is formed having a region of non-extensible base layer material bordered on at least one side thereof by an extensible region, the extensible region comprising a composite of the elastomeric material and

inherently extensible base layer material.

21. (Withdrawn) The method as in claim 20, further comprising superimposing and attaching a second elastomeric material along a second side opposite the first side of the inherently extensible base layer material, the second elastomeric material having a width that is less than the width of the base layer material, the non-extensible region of the resulting composite material bordered on opposite sides by a composite extensible region.

22. (Withdrawn) The method as in claim 21, wherein the elastomeric materials are attached to the base layer material in an untensioned state.

23. (Withdrawn) The method as in claim 21, wherein the elastomeric materials are attached to the base layer material in a tensioned state.

24. (Withdrawn) The method as in claim 21, wherein the other material to which the extensible base layer material is attached is an absorbent body of an absorbent article.

25. (Previously presented) An absorbent article, comprising:

- a chassis having a front waist region, a back waist region, and a crotch region extending between said front and back waist regions;
- an outer cover member extending longitudinally between said front and back waist regions;
- a bodyside liner extending longitudinally between said front and back waist regions;
- a non-extensible absorbent body structure sandwiched between said outer cover member and said bodyside liner;

said bodyside liner comprising a material having
an untensioned and ungathered, inherently extensible base layer of a fluid permeable material, said base layer extendable to at least about 125% of its original dimension in a first direction essentially without fracture of said base layer material;
a strip of substantially untensioned elastomeric material attached to said base layer material along a longitudinally extending side thereof to form a flat planar composite region and such that a first region of said base layer material is adjacent a composite region of said elastomeric material and said base layer material, said first region of base layer material that is adjacent said composite region is also generally wholly disposed on and bonded directly to said absorbent body structure; and
wherein said first region of base layer material is bonded directly to the immediately underlying portion of said absorbent body structure in registry with the first region of base layer material in its untensioned condition and said composite region is stretchable in at least a transverse direction in use of said absorbent article.

26. (Withdrawn) The absorbent article as in claim 25, wherein said composite region of said bodyside liner is folded at a side fold line of said chassis and extends laterally back under said absorbent body structure and attaches to an opposite lateral side of said region of base layer material such that said composite region also defines said outer cover member of said chassis.

27. (Withdrawn) The absorbent article as in claim 26, wherein said composite region of said bodyside liner is folded outboard of said absorbent body structure so as to define longitudinally extending containment flaps on opposite lateral sides of said absorbent body structure.

28. (Withdrawn) The absorbent article as in claim 27, wherein said composite region of said bodyside liner is folded so as to define longitudinally extending elastomeric side panels outboard of said absorbent body structure.

9. Evidence Appendix:

None.

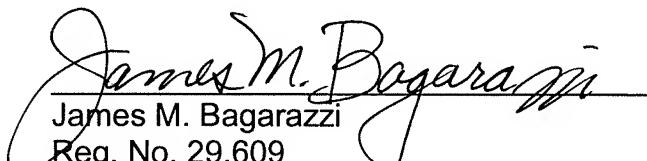
10. Related Proceedings Appendix:

Not Applicable.

Respectfully submitted,

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